

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Acceleration of Broadband Deployment)	WC Docket No. 11-59
Expanding the Reach and Reducing the Cost)	
of Broadband Deployment by Improving)	
Policies Regarding Public Rights of Way and)	
Wireless Facilities Siting)	

**REPLY COMMENTS OF
THE CITY OF LAKE FOREST, CALIFORNIA**

The City of Lake Forest, California, files these reply comments to address an unfounded criticism of the City’s wireless siting practices, and to discourage the Commission from adopting regulations or legal interpretations that would interfere with City practices that have successfully balanced the interests of the community and the wireless industry.

In its opening comments,¹ PCIA—The Wireless Infrastructure Association and the DAS Forum (collectively, “PCIA”) asserts that the City is one of many communities across the country that retains “obstructionist[] and problematic” consultants that impose “barriers and prohibitive costs associated with the deployment of wireless facilities.”² This could not be further from the truth: the City has *never* retained a consultant in this area, and the City’s wireless facility siting process—which it developed in coordination with industry—has facilitated, not impeded, broadband deployment. PCIA’s unfounded claim raises questions about the reliability of PCIA’s entire exhibit. We urge the Commission to recognize that such unsworn, unserved

¹ Comments of PCIA—The Wireless Infrastructure Association and the DAS Forum (a Membership Section of PCIA), WC Docket No. 11-59 (July 18, 2011) (“PCIA Comments”).

² PCIA Comments at Exhibit B, p.11.

allegations provide no basis for broader Commission regulation of local practices. We further encourage the Commission to reject any implication that local governments may not use such consultants when they deem it appropriate to do so.

I. PCIA’S CRITICISM OF THE CITY IS MISPLACED AND MISGUIDED.

PCIA’s criticism of the City for using consultants is both misplaced and misguided. The City has not used such consultants, and its wireless facility siting process is not characterized by the “barriers and prohibitive costs” PCIA describes. Moreover, PCIA’s implication that it is generally unreasonable for local governments to use consultants to assist with these matters is simply incorrect.³

A. PCIA’s Criticisms of the City’s Use of Consultants and Its Impact on the City’s Wireless Facility Siting Process Are Misplaced.

PCIA asserts that the City and many other jurisdictions “retain consultants indentified by the wireless infrastructure industry as obstructionists and problematic.” It claims that these consultants lead these communities to “charge excessive application fees, impose superfluous application requirements (including proof of need), require discretionary review for collocations, and delay the application and review process.”⁴ The City is startled by PCIA’s claims because, in every respect, they are wrong.

First, the City has *never* used a consultant to develop wireless facility siting standards or to process such applications. In fact, the City developed its ordinance by working directly with the wireless industry.⁵ After adopting an interim ordinance after the passage of the Telecommunications Act of 1996, the City worked to develop a permanent wireless facility

³ PCIA Comments at 23-24.

⁴ PCIA Comments at Exhibit B, p.12.

⁵ The City’s Wireless Communication Facilities chapter is located at chapter 9.162 of the City code.

ordinance. The City sent copies of this ordinance to all carriers that had processed applications within the City, and it invited carriers to a workshop. The City “received very positive comments from all carriers involved, as they felt that the ordinance was a detailed, comprehensive document which was also user friendly for all parties involved.”⁶

Second, the City’s fees to process a wireless telecommunication facility application are the same as they are for any other site development permit or conditional use permit application. These fees are designed to “defray the cost” of processing an application.⁷ The City has charged no extra fees for any outside consultant or third party reviewer (although, as explained below, if the City were required to hire extra personnel to handle wireless applications, it would be entirely appropriate and consistent with industry practice to require wireless applicants to bear those costs).

Third, the City does not “impose superfluous application requirements.” The application requirements allow the City to review important information about a proposed siting project.⁸ PCIA’s failure to identify what information it considers superfluous is telling. Its filing hints that it believes looking beyond the information the industry wishes to present—even as to basic issues like public safety—is inappropriate. It is not.

Fourth, the City does not require discretionary review for collocations: the City’s code provides that a collocated facility “shall be a permitted use not requiring a site development permit, conditional use permit, or other permit if it satisfies the requirements of Section 65850.6

⁶ City of Lake Forest, CA, Public Hearing Item No. 10, Report from Kathy L. Graham, J.D., AICP to City Council (April 21, 1998).

⁷ Lake Forest, CA, Code of Ordinances §§ 9.162.080 B.1.e; 9.184.050.

⁸ Lake Forest, CA, Code of Ordinances § 9.162.080B.

of the California Government Code.”⁹ The California statute *encourages* these collocations in Lake Forest and in other California cities.¹⁰

Contrary to PCIA’s implication, wireless facility siting in the City has been very successful. During the past 5 years, the City’s staff has not denied a single application, and the Planning Commission has denied only 1, when the applicant refused to move its site 5 feet. Over the same period, the City has approved 14 wireless facility applications administratively and 8 with use permits. Because PCIA’s claims are baseless, the Commission should immediately strike them from the record. Moreover, as discussed in Part II, the Commission cannot rely on PCIA’s lists.

B. PCIA’s General Criticism of Local Governments’ Use of Consultants Is Misguided.

PCIA’s criticism is not only misplaced; it is misguided. PCIA more generally criticizes local governments’ use of consultants.¹¹ The Commission should recognize that it is perfectly appropriate for local governments to use consultants if it facilitates the review process and assists in providing decision makers and the public with relevant information to ensure public health, safety and welfare. Like many local governments, the City has limited resources, and must rely

⁹ Lake Forest, CA, Code of Ordinances § 9.162.030.

¹⁰ Lake Forest, CA, Code of Ordinances § 9.162.120E. The California statute generally permits collocation where the collocation is consistent with the conditions placed on the underlying facility. For example, if the underlying facility is a stealth facility, the collocation facility would have to comply with the stealth conditions. Likewise, a collocated facility cannot be installed in a way that increases the risk of public injury (as might occur if structures associated with the collocation are not properly shielded by fencing). These conditions are different than those proposed by PCIA, which would essentially permit collocation even where it fundamentally changes an underlying structure or created public safety risks. But the conditions do not cause delay, and are hardly excessive.

¹¹ PCIA Comments at 23-24.

on outside consultants on a range of matters for which it would be inefficient for the City to retain full-time staff in-house.¹² This is especially true for technical and specialized matters, including those that only infrequently arise under State law. For example, the City code provides that “[p]rior to approving any conditional use permit for a major facility, environmental review shall be undertaken in compliance with the California Environmental Quality Act and an environmental impact report certified, or a negative declaration or mitigated negative declaration adopted.”¹³ Because most wireless facility siting projects in Lake Forest have only required a negative declaration or a mitigated negative declaration—not a more comprehensive environmental impact report—the City has handled these matters without outside assistance.¹⁴ But it would certainly be reasonable for the City to use a consultant to assist with such environmental matters, and with any other issues related to wireless facility siting. It is likely to be more efficient and cost-effective: the alternative would be to retain an expert on staff, and to charge all wireless providers for the cost of maintaining special staff. In fact, the effect would be to require providers who carefully site and size towers to avoid environmental and other issues to bear costs created by providers who ignore those matters. The Commission should not interfere with local use of consultants, even assuming it had authority to do so. Certainly, local governments’ use of consultants does not justify regulation any more than industry’s use of subcontractors and consultants.

¹² Indeed, if the City were required to hire additional staff, its costs to process applications would inevitably be higher, as well.

¹³ Lake Forest, CA, Code of Ordinances § 9.162.160A.

¹⁴ Of course, impact depends in part on placement. For example, a proposal to place a tower in an environmentally sensitive area might require more analysis; Lake Forest has not received requests for placement that raise the issue.

II. THE COMMISSION SHOULD NOT REGULATE LOCAL WIRELESS FACILITY SITING PRACTICES.

PCIA's baseless criticism of the City underscores that even if the Commission had authority to regulate these local practices (it does not),¹⁵ the current record would not permit it to do so. Like all industry commenters in the proceeding, PCIA did not serve its comments on any named community, and it did not verify its comments with a declaration or affidavit. Accordingly, the industry's allegations prove little. If the City can be targeted erroneously, so, too, can many of the other communities the industry has named.¹⁶ The Commission has already received filings from Wichita, Kansas, and others that indicate that Lake Forest is not alone. Many communities in California and elsewhere—facing significant budget issues—will likely believe it is not necessary to respond to patently false industry accusations, believing that (as a matter of due process) if those allegations were serious, they would be specific, clear, and served on them directly. Many may also believe that before relying on sheer volume, the Commission would itself investigate these allegations, particularly after the agency has warned against use of “anecdotal” allegations to support proposed regulations (the PCIA lists cannot even be said to rise to the level of anecdote). Moreover, these highly questionable criticisms are trumped by local governments' comments, which show that federal regulation of these inherently local matters is not justified or permitted.

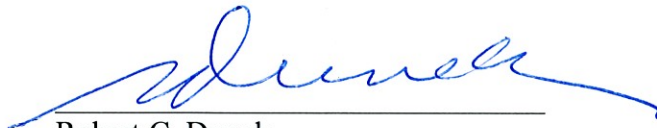
¹⁵ See Comments of the National League of Cities *et al.*, WC Docket No. 11-59, at 52-67 (July 18, 2011).

¹⁶ If any action is appropriate, it is the case-by-case approach that Congress adopted under the Communications Act. See 47 U.S.C. §§ 253(d), 332(c)(7)(B). Only this will allow for proper scrutiny of the industry's claims.

CONCLUSION

The Commission should refrain from taking any action to regulate local government practices based on PCIA's misplaced, misguided criticism of the City.

Respectfully submitted,



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